v. *Belcher, supra,* 404 U.S. at 84, this Court emphasized its "limited function under the Constitution" in this type of case and summarized the governing standard of review as follows (404 U.S. at 84):

> If the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment.

In light of these principles we submit that the classification established by Section 5(b) of the Act, as amended, is valid. The tax dependent provision disqualifies those households which Congress could reasonably assume are receiving—or are in a position to obtain—significant support from a person who himself has income above the level of food stamp eligibility.[2] Congress may exclude from eligibility in this public welfare program those persons who are likely to have alternative means of finding necessary support.[3] The

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[2] As noted above (*supra*, p. 4), a taxpayer may claim a child as a dependent only if he furnishes over one-half of the child's support, and the tax dependent amendment relies only upon the claim of dependency made by a taxpayer living in a household which is not eligible for food stamp assistance. By applying only to dependent children over the age of 17, the amendment avoids discouraging parental support of minor children.

[3] The legislative history of the tax dependent amendment reflects a congressional concern about abuses of the program by "college students, children of wealthy parents." 116 Cong. Rec. 41979 (Congressman Latta). See also 116 Cong. Rec. 41981 (Congressman Poage); 116 Cong. Rec. 41993 (Congresswoman May); 116 Cong. Rec. 42021 (Congressman Belcher). This amendment is thus a manifestation of Congress' concern that

tax dependent amendment thus provides a reasonable method of achieving the legitimate legislative purpose of providing assistance to those with the greatest likelihood of genuine need.[4]

The court below, however, struck down the statute apparently because the plaintiffs in this case—despite a taxpayer's claim of dependency as to members of their respective households—were still in need of food stamps. But the asserted need of plaintiffs in this particular case (or in the hypothetical cases mentioned by the court) is not a sufficient basis for invalidating the statutory classification, since Congress could reasonably find it to be valid and fair generally. As this Court stated in *Dandridge* v. *Williams, supra,* 397 U.S. at 485 (emphasis added):

> If the classification has some "reasonable basis," it does not offend the Constitution sim-

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the "voluntary poor" had taken advantage of the food stamp program. Also see our jurisdictional statement in *United States Department of Agriculture* v. *Moreno*, No. 72–534, at pp. 9–10 and n. 8, which explains that the 1971 amendment to Section 3(e) of the Act appears designed to correct a similar abuse. Congress' concern about program abuses is also reflected in the requirement in Section 5(c) of the Act, 7 U.S.C. 2014(c), added in 1971, that most able-bodied persons between the ages of 18 and 65 (with the exception of mothers of dependent children, bona fide students, and certain others) register for and accept work as a mandatory precondition to the eligibility of their respective households.

[4] Moreover, since a claim of dependency by a taxpayer might not be known until the filing of his return in the subsequent year, the disqualification during the one-year period after the expiration of the earlier tax period insures that this provision can be given meaningful enforcement.

ply because the classification "is not made with mathematical nicety or *because in practice it results in some inequality.*" * * * [5]

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted.

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DECEMBER 1972.

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[5] The court's characterization of the provision as creating an "irrebuttable presumption contrary to fact" means, we assume, nothing more than that the classification here rests upon a rationale which, in the court's view, does not apply to these particular plaintiffs. As this Court's opinion in *Dandridge* makes clear, however, the rationale which sustains a statute under the "reasonable basis" test need not apply to all possible members of the challenged class, so long as it reasonably applies to the class in general. Thus, in *Dandridge* this Court upheld a welfare provision which disfavored large families because of the state's interest "in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor" (397 U.S. at 486), even though "no family members of any of the named plaintiffs in [that case were] employable" (*ibid.*, n. 20).

The court below apparently overlooked this consideration, erroneously relying on cases involving encroachment upon fundamental rights (*Carrington* v. *Rash*, 380 U.S. 89, and *Stanley* v. *Illinois*, 405 U.S. 645), where far greater precision in classification has been required. In public welfare legislation, however, such precision in classification is often not practicable and, in any event, is not constitutionally required. See *Jefferson* v. *Hackney*, *supra*, 406 U.S. at 546–547.

APPENDIX A

[Filed August 14, 1972, James F. Davey, Clerk]

United States District Court for the District of Columbia

C.A. No. 1412–72

LULA MAE MURRY, ET AL., PLAINTIFFS

v.

U.S. DEPARTMENT OF AGRICULTURE, ET AL., DEFENDANTS

PER CURIAM MEMORANDUM AND FINAL ORDER

A three-judge Court has been convened pursuant to 28 U.S.C. §§ 2282 and 2284 to consider the Constitutionality of the "tax dependent" Amendment to the Food Stamp Act (7 U.S.C. § 2014(b)). This Amendment, effective January, 1971, provides in pertinent part:

> "Any household which includes a member who has reached his eighteenth birthday and is claimed as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household, shall be ineligible to participate in any food stamp program established pursuant to this chapter during the tax period such dependency is claimed and for a period of one year after expiration of such tax period."

Plaintiffs, as proper representatives of households adversely affected by this Amendment, brought a class action seeking an injunction against continued enforcement of the Amendment and its implementing

regulations. There are no facts in dispute and the issues have been fully briefed and argued.

The primary and announced purpose of the Amendment, as defendants acknowledge, was to deny benefits of the Food Stamp Program to non-needy college students. The Amendment, however, goes far beyond this and its operation is inflexible. Households containing no college student, that had established clear eligibility for Food Stamps and which still remain in dire need and otherwise eligible are now denied stamps if it appears that a household member 18 years or older is claimed by someone as a tax dependent. The legitimacy of the claimed dependency, the amount of support, if any, received by the household member, or the continued *bona fide* needs of the impoverished household are not considered. Where, as may frequently be the case, the claimed tax dependency is made by an absent father no longer a member of the household, there is, for example, no rational relationship between denial of food stamps to the deserted, destitute household and the resources available to or provided by the father claiming dependency. The result is the same if the father, claiming dependency, does so without legal justification in that he contributes nothing to the claimed dependent. The arbitrary result is compounded by the Amendment's requirement that ineligibility continue a calendar year beyond the year in which dependency is claimed.

Assuming the legitimacy of the Congressional purpose, the Amendment wholly missed its target. By creating an irrebuttable presumption contrary to fact the Amendment classifies households arbitrarily along lines that have no rational relationship to the statutory scheme or the Amendment's apparent purpose. It creates a classification which denies similar treatment

to all persons similarly situated and is, on its fact [sic] and by its operation as established in this record, grossly unfair. Thus, there is both a denial of due process and of equal protection. *Schlesinger* v. *Wisconsin,* 270 U.S. 230 (1926); *Carrington* v. *Rash,* 380 U.S. 89 (1965); *Stanley* v. *Illinois,* 40 U.S.L.W. 4371 (U.S., April 3, 1972); *Royster Guano Co.* v. *Virginia,* 253 U.S. 412 (1920); *Bolling* v. *Sharpe,* 347 U.S. 497 (1954); *Reed* v. *Reed,* 404 U.S. 71 (1971).

Defendants' reliance on *Dandridge* v. *Williams,* 397 U.S. 471 (1970), is misplaced. Equal protection questions must be resolved on a factual basis and *Dandridge* involved nothing approaching the sweeping, arbitrary effect of this challenged Amendment.

The "tax dependent" Amendment to the Food Stamp Act violates the Fifth Amendment to the Constitution and its further enforcement and implementation by defendants is permanently enjoined.

SO ORDERED

ROGER ROBB,
Judge, U.S. Court of Appeals for the D.C. Circuit,

GEORGE L. HART, JR.,
Judge, U.S. District Court.

GERHARD A. GESELL,
Judge, U.S. District Court.

Date: August 14, 1972.

APPENDIX B

[Filed September 12, 1972, James F. Davey, Clerk]

United States District Court for the District of Columbia

LULA MAE MURRY, ET AL., PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL., DEFENDANTS

NOTICE OF APPEAL

Notice is hereby given this 12th day of September, 1972, that the defendants hereby appeal to the Supreme Court of the United States from the judgment of this Court entered on the 14th day of August, 1972, in favor of plaintiffs against said defendants. This appeal is taken pursuant to 28 U.S.C. §§ 1252, 1253 and 2101.

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